

20.1	Court Rules That Apply to “Automatic Waiver” Proceedings in District and Circuit Courts .....	430
20.2	“Automatic Waiver” of Family Division Jurisdiction .....	430
20.3	Prosecutorial Charging Discretion .....	432
20.4	Right to Counsel .....	433
20.5	Arraignments in District Court .....	434
	A. Time Requirements .....	434
	B. Required Procedures .....	434
	C. Setting Bail .....	435
20.6	Procedures at Preliminary Examinations .....	435
	A. Time Requirements .....	435
	B. Rules of Evidence .....	436
	C. Bindover Decisions Following Preliminary Examinations .....	436
20.7	Waiver of Preliminary Examination .....	437
20.8	Juvenile’s Right to a Speedy Trial .....	437
20.9	Notice of Juvenile Sentencing Hearing .....	438
20.10	Time and Notice Requirements in “Automatic Waiver” Proceedings .....	438

### **In this chapter. . .**

“Automatic waiver” proceedings may be instituted when a prosecuting attorney decides to file a complaint in district court alleging a specified juvenile violation instead of filing a delinquency petition in the Family Division of Circuit Court. If the juvenile is bound over for trial following a preliminary examination, he or she faces criminal trial in the Circuit Court. This chapter discusses the procedural requirements for arraignments and preliminary examinations in “automatic waiver” proceedings. It does not contain discussion of trial or plea procedure.

Related issues are discussed in the following sections of this benchbook:

- comparison of waiver and designated case proceedings, Section 1.6;
- jurisdiction, Section 2.6;
- custody and detention, Section 3.10;
- “special adjournment” of preliminary hearings to allow the prosecuting attorney decide whether to proceed under the “automatic waiver” statutes, Section 3.6; and
- admissibility of confessions, Section 7.5.

**Note on court rules.** On February 4, 2003, the Michigan Supreme Court approved extensive amendments to Subchapter 5.900 of the Michigan Court Rules, which govern delinquency, minor PPO, designated case, and “traditional waiver” proceedings, and to Subchapter 6.900, which govern “automatic waiver” proceedings. Subchapter 5.900 was renumbered Subchapter 3.900. These rule amendments are effective May 1, 2003. Although not in effect on the publication date of this benchbook, the rule amendments have been included here. For the rules in effect prior to May 1, 2003, see the first edition of this benchbook, *Juvenile Justice Benchbook: Delinquency & Criminal Proceedings* (MJI, 1998).

## 20.1 Court Rules That Apply to “Automatic Waiver” Proceedings in District and Circuit Courts

MCR 6.901(B) provides that the rules in Subchapter 6.900 apply to criminal proceedings in the district court and circuit court concerning a juvenile against whom the prosecuting attorney has authorized the filing of a criminal complaint charging a “specified juvenile violation” instead of approving the filing of a petition in the Family Division of Circuit Court. Following the filing of a complaint and warrant in district court, the rules in Subchapter 6.900 take precedence over, but are not exclusive of, the rules of procedure applicable to criminal actions against adult offenders. MCR 6.901(A). A complete discussion of the rules of criminal procedure not contained in Subchapter 6.900 is beyond the scope of this benchbook.

\*See Chapter 16.

The rules do not apply to cases where there has been a “traditional” waiver of jurisdiction over the juvenile pursuant to MCL 712A.4. MCR 6.901(B).\*

## 20.2 “Automatic Waiver” of Family Division Jurisdiction

\*See also Sections 2.6 (jurisdiction in “automatic” waiver cases) and 3.2 (taking custody of juvenile).

Under MCL 712A.2(a)(1), the Family Division has jurisdiction over a juvenile 14 years of age or older who is charged with a “specified juvenile violation” *only* if the prosecuting attorney files a petition in the Family Division instead of authorizing a complaint and warrant and proceeding in district court.\* MCL 600.606(1) states that “[t]he circuit court has jurisdiction to hear and determine a specified juvenile violation if committed by a juvenile 14 years of age or older and less than 17 years of age.”

**Note:** Although MCL 600.606(1) assigns jurisdiction to “circuit court” and the Family Division is within the circuit court, “automatic waiver” cases are heard in the Criminal Division of Circuit Court. See MCL 600.601(3) and 600.1021(1)(e), limiting the Family Division’s jurisdiction to cases under the Juvenile Code, MCL 712A.1 et seq. MCR 6.903(C) defines “court” as the

circuit court as provided in MCL 600.606, but not including the Family Division of Circuit Court.

MCL 712A.2(a)(1)(A)–(I), MCL 600.606(2)(a)–(i), and MCL 764.1f(2)(a)–(i) list the specified juvenile violations. The “specified juvenile violations” are as follows:

- burning a dwelling house, MCL 750.72;
- assault with intent to murder, MCL 750.83;
- assault with intent to maim, MCL 750.86;
- assault with intent to rob while armed, MCL 750.89;
- attempted murder, MCL 750.91;
- first-degree murder, MCL 750.316;
- second-degree murder, MCL 750.317;
- kidnapping, MCL 750.349;
- first-degree criminal sexual conduct, MCL 750.520b;
- armed robbery, MCL 750.529;
- carjacking, MCL 750.529a;
- bank, safe, or vault robbery, MCL 750.531;
- assault with intent to do great bodily harm, MCL 750.84, if armed with a dangerous weapon;
- first-degree home invasion, MCL 750.110a(2), if armed with a dangerous weapon;
- escape or attempted escape from a medium- or high-security juvenile facility operated by the Family Independence Agency or a county juvenile agency, or a high-security facility operated by a private agency under contract with the Family Independence Agency or a county juvenile agency, MCL 750.186a;

\*Effective March 1, 2003, 2002 PA 665 amended MCL 333.7401 (2)(a)(i) and MCL 333.7403 (2)(a)(i) to require manufacture, sale, delivery, or possession of *1000 grams* or more of a Schedule 1 or 2 narcotic or cocaine.

- manufacture, sale, or delivery of 650 grams or more of a Schedule 1 or 2 narcotic or cocaine, MCL 333.7401(2)(a)(i), or possession of 650 grams or more of a Schedule 1 or 2 narcotic or cocaine, MCL 333.7403(2)(a)(i);\*
- any attempt, MCL 750.92;
- any solicitation, MCL 750.157b;
- any conspiracy, MCL 750.157a, to commit any of the above crimes.

MCR 6.903(H) also lists these “specified juvenile violations.”

“Dangerous weapon,” as used in the context of a “specified juvenile violation,” means one of the following:

- a loaded or unloaded firearm, whether operable or inoperable;
- a knife, stabbing instrument, brass knuckles, blackjack, club, or other object specifically designed or customarily carried or possessed for use as a weapon;
- an object that is likely to cause death or bodily injury when used as a weapon and that is used as a weapon or carried or possessed for use as a weapon; and
- an object or device that is used or fashioned in a manner to lead a person to believe the object or device is a weapon.

MCL 712A.2(a)(1)(B), MCL 600.606(2)(b), and MCL 764.1f(2)(b). MCR 6.903(I) also contains this definition of “dangerous weapon.”

## 20.3 Prosecutorial Charging Discretion

MCL 764.1f(1) sets forth the required procedure for divesting the Family Division of jurisdiction and vesting jurisdiction in the Criminal Division when a “specified juvenile violation” is alleged. That provision states as follows:

“If the prosecuting attorney has reason to believe that a juvenile 14 years of age or older but less than 17 years of age has committed a specified juvenile violation, the prosecuting attorney may authorize the filing of a complaint and warrant on the charge with a magistrate concerning the juvenile.”

Whether to proceed in the Family Division or Criminal Division of Circuit Court on an enumerated offense is a matter of prosecutorial discretion. A prosecutorial policy to authorize complaints and warrants in all cases

involving juveniles charged with first- and second-degree murder does not violate due process or represent an abuse of prosecutorial discretion. *People v Rode*, 196 Mich App 58, 65–66 (1992), rev'd on other grounds sub nom *People v Hana*, 447 Mich 325 (1994).

The probate court (now the Family Division of the Circuit Court) did not abuse its discretion in dismissing a petition on the prosecutor's motion, where the prosecutor immediately filed a complaint under the "automatic waiver" statutes. There was no denial of due process or bad faith on the part of the prosecutor, as the juvenile was neither detained nor prejudiced by any delay, and the prosecutor dismissed the petition based on the seriousness of the alleged offenses, newly discovered evidence, and a belief that the alleged offenses were part of a conspiracy. *People v Dilling*, 222 Mich App 44, 47–50 (1997).

## 20.4 Right to Counsel

The magistrate or court must advise a juvenile of his or her right to counsel at each stage of the proceedings. MCR 6.905(A) states as follows:

"If the juvenile is not represented by an attorney, the magistrate or court shall advise the juvenile at each stage of the criminal proceedings of the right to the assistance of an attorney. If the juvenile has waived the right to an attorney, the court at later proceedings must reaffirm that the juvenile continues to not want an attorney."

**Appointment of counsel.** The court must appoint an attorney to represent the juvenile unless counsel has been retained or the juvenile has waived the right to an attorney. MCR 6.905(B).

**Waiver of right to counsel.** Under MCR 6.905(C)(1)–(5), the magistrate or court may permit waiver of the right to counsel if:

"(1) an attorney is appointed to give the juvenile advice on the question of waiver;

"(2) the magistrate or the court finds that the juvenile is literate and is competent to conduct a defense;

"(3) the magistrate or the court advises the juvenile of the dangers and of the disadvantages of self-representation;

"(4) the magistrate or the court finds on the record that the waiver is voluntarily and understandingly made; and

"(5) the court appoints standby counsel to assist the juvenile at trial and at the juvenile sentencing hearing."

**Costs.** The court may assess costs of legal representation, in whole or in part, against the juvenile, a person responsible for the support of the juvenile, or both. An order assessing costs shall not be binding on a person responsible for the juvenile’s support unless an opportunity for a hearing has been given and until a copy of the order is served on the person, in person or by first-class mail, to the person’s last-known address. MCR 6.905(D).

\*See Sections 3.2 and 3.10 for a detailed discussion of obtaining custody of juveniles in “automatic waiver” cases.

## 20.5 Arraignments in District Court

“When the prosecuting attorney authorizes the filing of a complaint and warrant charging a juvenile with a specified juvenile violation instead of approving the filing of a petition in the family division of circuit court, the juvenile in custody must be taken to the magistrate for arraignment on the charge.\* The prosecuting attorney must make a good-faith effort to notify the parent of the juvenile of the arraignment.” MCR 6.907(A).

### A. Time Requirements

“The juvenile must be released if arraignment has not commenced:

- (1) within 24 hours of the arrest of the juvenile; or
- (2) within 24 hours after the prosecuting attorney authorized the complaint and warrant during special adjournment pursuant to MCR 3.935(A)(3), provided the juvenile is being detained in a juvenile facility.” MCR 6.907(A)(1)–(2).

### B. Required Procedures

MCR 6.907(C)(1)–(2) set forth the required procedure for arraignments:

“At the arraignment on the complaint and warrant:

- (1) The magistrate shall determine whether a parent, guardian, or an adult relative of the juvenile is present. Arraignment may be conducted without the presence of a parent, guardian, or adult relative provided the magistrate appoints an attorney to appear at arraignment with the juvenile or provided an attorney has been retained and appears with the juvenile.
- (2) The magistrate shall set a date for the juvenile’s preliminary examination within the next 14 days, less time given and used by the prosecuting attorney under special adjournment

pursuant to MCR 3.935(A)(3), up to three days credit. The magistrate shall inform the juvenile and the parent, guardian, or adult relative, if present, of the preliminary examination date. If a parent, guardian, or adult relative is not present at the arraignment, the court shall direct the attorney of the juvenile to advise a parent or guardian of the juvenile of the scheduled preliminary examination.”

### C. Setting Bail

Unless detention without bail is allowed, the magistrate or court must advise the juvenile of a right to bail as provided for an adult accused.\* “The magistrate or the court may order a juvenile released to a parent or guardian on the basis of any lawful condition, including that bail be posted.” MCR 6.909(A)(1).

MCR 6.909(A)(2)(a)–(b) set forth the conditions for detaining a juvenile without bail. Those provisions state:

“(2) If the proof is evident or if the presumption is great that the juvenile committed the offense, the magistrate or the court may deny bail:

(a) to a juvenile charged with first-degree murder, second-degree murder, or

(b) to a juvenile charged with first-degree criminal sexual conduct, or armed robbery,

(i) who is likely to flee, or

(ii) who clearly presents a danger to others.”

## 20.6 Required Procedures at Preliminary Examinations

Preliminary examinations for juveniles in “automatic waiver” cases must follow the same procedures as preliminary examinations for adult defendants charged with criminal offenses. See, generally, MCR 6.110 and MCR 6.901(A) (the rules in Subchapter 6.900 “take precedence over, but are not exclusive of, the rules of procedure applicable to criminal actions against adult offenders”).\*

### A. Time Requirements

Preliminary examinations must be held within 14 days after the juvenile’s arraignment, less any time used by the prosecuting attorney for a special

\*For a discussion of the requirements for setting bail and other conditions of release in felony cases, see *Criminal Procedure Monograph 4—Felony Arraignments in District Court* (MJJ, 1992).

\*See *Criminal Procedure Monograph 5—Preliminary Examinations (Revised Edition)* (MJJ, 2003).

adjournment pursuant to MCR 3.935(A)(3), up to three days. Thus, the period consumed by the special adjournment, up to three days credit, must be deducted from the 14 days allowed for the conduct of the preliminary examination following district court arraignment. MCR 6.907(C)(2).

## **B. Rules of Evidence**

Each party may subpoena witnesses, offer proofs, and examine and cross-examine witnesses at the preliminary examination. Except as otherwise provided by law, the court must conduct the examination in accordance with the rules of evidence. A verbatim record must be made of the preliminary examination. MCR 6.110(C).

## **C. Bindover Decisions Following Preliminary Examinations**

If a district court judge determines that probable cause exists that a “specified juvenile violation” was committed and that the juvenile committed it, the juvenile must be bound over to the Circuit Court, which then has jurisdiction over the juvenile. MCL 766.13. Note that the definition of “specified juvenile violation” includes:

- any attempt, solicitation, or conspiracy to commit one of the “specified juvenile violations”;
- any lesser-included offense arising out of the same transaction as a “specified juvenile violation” if the juvenile is also charged with a “specified juvenile violation”; and
- any other offense arising out of the same transaction if the juvenile is also charged with a “specified juvenile violation.”

MCL 712A.2(a)(1)(E)–(I), MCL 600.606(2)(e)–(i), and MCL 764.1f(2)(e)–(i).

MCL 766.14(2) and MCR 6.911(B) require the magistrate to transfer the case “back” to the Family Division if, at the conclusion of the preliminary examination, the magistrate finds that a “specified juvenile violation” did not occur or that there is not probable cause to believe that the juvenile committed a “specified juvenile violation,” but that there is probable cause to believe that some other offense occurred and that the juvenile committed that other offense.

As noted above, the definition of “specified juvenile violation” includes lesser-included offenses and other offenses arising out of the same transaction as a “specified juvenile violation” if the juvenile is *charged* with a “specified juvenile violation.” This suggests that the district court may bind the juvenile over for trial if it finds probable cause that the juvenile committed a lesser-included or other offense rather than the charged enumerated offense. However, the district court may not bind the juvenile



over for trial on these other offenses unless it also finds probable cause that the juvenile committed an enumerated “specified juvenile violation.” See *People v Veling*, 443 Mich 23, 31, 42–43 (1993), where the Michigan Supreme Court held that the circuit court gains jurisdiction over non-enumerated offenses only if the juvenile is also *charged in circuit court* with an enumerated offense, and the circuit court does not lose jurisdiction to sentence the juvenile if the juvenile is convicted of a lesser-included offense or other offense that is not an enumerated offense.

On the other hand, the district court may bind the juvenile over to circuit court if it finds probable cause that the juvenile committed a “specified juvenile violation” other than the offense charged in the district court complaint. For example, if the juvenile is charged with first-degree murder, and the district court finds probable cause that the juvenile committed second-degree murder, the juvenile could be bound over for trial since second-degree murder is also an enumerated “specified juvenile violation.”

MCR 3.939(A) states that the Family Division must hear and dispose of a case transferred pursuant to MCL 766.14 in the same manner as if the case had commenced in the Family Division. A petition that has been approved by the prosecuting attorney must be submitted to the court. Pursuant to MCR 3.939(B), the Family Division “may use the probable cause finding of the magistrate made at the preliminary examination to satisfy the probable cause requirement of MCR 3.935(D)(1).”\*

\*See Section 5.12(A) for an explanation of the probable cause finding necessary for detention.

Transfer of the case to the Family Division does not prevent the Family Division from waiving jurisdiction using the “traditional” waiver procedures under MCL 712A.4. MCL 766.14(3).\*

\*See Chapter 16.

## 20.7 Waiver of Preliminary Examination

“The juvenile may waive a preliminary examination if the juvenile is represented by an attorney and the waiver is made and signed by the juvenile in open court. The magistrate shall find and place on the record that the waiver was freely, understandingly, and voluntarily given.” MCR 6.911(A).

## 20.8 Juvenile’s Right to a Speedy Trial

Within seven days of the filing of a motion, the court must release a juvenile who has remained in detention while awaiting trial for more than 91 days. In computing the 91-day period, the court must exclude delays as provided in MCR 6.004(C)(1)–(6) and the time required to conduct the hearing on the motion. MCR 6.909(C).

\*Juvenile sentencing hearings are discussed in Chapter 21.

## 20.9 Notice of Juvenile Sentencing Hearing

“If a juvenile sentencing hearing is required, the prosecuting attorney, the juvenile, and the attorney of the juvenile must be advised on the record immediately following conviction of the juvenile by a guilty plea or verdict of guilty that a hearing will be conducted at sentencing, unless waived, to determine whether to sentence the juvenile as an adult or to place the juvenile on juvenile probation and commit the juvenile to state wardship as though a delinquent. The court may announce the scheduled date of the hearing. On request, the court shall notify the victim of the juvenile sentencing hearing.” MCR 6.931(C).\*

### 20.10 Table of Time and Notice Requirements in “Automatic Waiver” Proceedings

The following table contains time and notice requirements only; for contents of notices, see the appropriate section. Also, only provisions applicable to cases involving juveniles have been included; provisions governing general criminal procedure in the Circuit Court are excluded. To compute time periods, see MCR 1.108. For court holidays, see MCR 8.110(D).

Event	Time	Notice
<b>Arraignment in District Court</b>	The juvenile must be released if the arraignment has not commenced within 24 hours after arrest, or within 24 hours after the prosecutor authorized the complaint and warrant during special adjournment, if the juvenile is detained in a juvenile facility.	MCR 6.907(A). <b>See Section 20.5(A)</b>
	Prosecutor must make a good-faith effort to notify the juvenile’s parent.	MCR 6.907(A). <b>See Section 20.5(B)</b>

Event	Time	Notice
<b>Preliminary Examination in District Court</b>	<p>Court must conduct exam within 14 days of arraignment, less time used during special adjournment, up to 3 days.</p> <p>During arraignment, the court must inform the juvenile and parent, guardian, or adult relative, if present, of the examination date. If the parent, guardian, or adult relative is not present, the juvenile's attorney must advise them of the examination date.</p>	<p>MCR 6.907(C). <b>See Section 20.6(A)</b></p> <p>MCR 6.907(C). <b>See Section 20.5(B)</b></p>
<b>Trial in “Automatic Waiver” Cases</b>	<p>Court must release a juvenile within 7 days of filing a speedy trial motion if the juvenile is detained awaiting trial for more than 91 days.</p>	<p>MCR 6.909(C). <b>See Section 20.8</b></p>
<b>Annual Reviews of Juveniles Placed on Probation and Committed to Public Wardship</b>	<p>Court must conduct an annual review.</p> <p>No hearing is required, but court may not order more restrictive placement or treatment without a hearing pursuant to MCR 6.937.</p>	<p>MCL 769.1(11) and MCR 6.935(B)(2). <b>See Section 22.2</b></p> <p>MCR 6.935(D). <b>See Section 22.2</b></p>

Event	Time	Notice
<b>Progress Reviews of Juveniles Placed on Probation and Committed to Public Wardship</b>	<p>Court must conduct a review 182 days after entry of the order of commitment and semi-annually thereafter.</p> <p>No hearing is required, but court may not order more restrictive placement or treatment without a hearing pursuant to MCR 6.937.</p>	<p>MCR 6.935(B)(1). <b>See Section 22.2</b></p> <p>MCR 6.935(D). <b>See Section 22.2</b></p>
<b>Periodic Review Hearing for Juveniles Placed on Probation and Committed to Public Wardship</b>	<p>On petition of the institution or agency to which a juvenile was committed, court may conduct a hearing any time before the juvenile's 19th birthday or, if jurisdiction was continued, juvenile's 21st birthday.</p> <p>Not less than 14 days before the hearing, court must notify the prosecutor, juvenile, agency or superintendent of facility to which the juvenile has been committed, and (if addresses known) parent or guardian.</p>	<p>MCR 6.937(B). <b>See Section 22.2</b></p> <p>MCR 6.937(A)(1). <b>See Section 22.2</b></p>

Event	Time	Notice
<b>Commitment Review Hearings for Juveniles Placed on Probation and Committed to Public Wardship</b>	<p>Court must hold a hearing within 42 days before juvenile's 19th birthday.</p> <p>FIA or agency, facility, or institution to which the juvenile was committed must advise the court at least 91 days before the juvenile's 19th birthday of the need to schedule a hearing. Not less than 14 days before the hearing, court must notify the prosecutor, juvenile, agency or superintendent of facility to which juvenile has been committed, and (if addresses known) parent or guardian.</p>	<p>MCR 6.937(A). <b>See Section 22.3(A)</b></p> <p>MCR 6.937(A)(1). <b>See Section 22.3(B)</b></p>
<b>Final Review Hearing for Juveniles Placed on Probation and Committed to Public Wardship</b>	<p>Court must conduct a hearing not less than 3 months before the end of the probation and commitment period.</p> <p>Not less than 14 days before the hearing, court must notify the prosecutor, juvenile, parent or guardian (if addresses known).</p>	<p>MCL 769.1b(5) and MCR 6.938(A). <b>See Section 22.8</b></p> <p>MCL 769.1b(6) and MCR 6.938(B). <b>See Section 22.8(A)</b></p>